

REMARKS/ARGUMENTS

Petition is hereby made under the provisions of 37 CFR 1.136(a) for an extension of one month of the period for response to the Office Action. Authorization to charge the fee to our deposit account is enclosed.

The Examiner rejected claims 1 to 46 and 48 to 53 under 35 USC 112, first paragraph, on the basis that the specification, while enabling for removing solvent from the extracted oil seed meal at a temperature from 20° to 50°C to provide a desolventized oil seed meal, does not reasonably provide enablement for recovering solvent from the extracted oil seed meal at any temperature below 50°C. The Examiner considered that the specification did not enable a person skilled in the art to which it pertains, or with which it is mostly nearly connected, to make or use the invention commensurate in scope with these claims. Reconsideration is requested having regard to the following comments and the amendments made to the claims.

Claim 1 has been amended to recite the temperature range to be 15° to 50°C. Basis for the lower limit of 15°C may be found at page 6, paragraph [0021]. This temperature range is exemplified by air desolventizing at 20°C, as specified in the Examples.

The Examiner comments in the Office Action that:

“The nature of the invention is such that a change in temperature may decrease the protein content of the rapeseed protein isolate and/or affect the structural properties.”

However, it is known from the cited Murray reference that it is possible to isolate a canola protein isolate having a protein content of at least 90 wt% from commercial canola meal. In this regard, attention is directed to Example 1 of the cited Murray reference, where a canola protein isolate having a protein content of 91% is obtained from commercial canola meal. As is set forth in the specification, in the commercial processing of canola oil seeds, desolventizing is effected at a

temperature of about 120° to 140°C. What the applicants have found is that effecting the desolventizing at a lower temperature below 50°C, there is extracted from the desolventized oil seed meal greater quantities of protein, leading to enhanced yields.

Accordingly, it is submitted that claim 1 is fully enabled and hence the rejection of claims 1 to 46 and 48 to 53 under 35 USC 112, first paragraph, should be withdrawn.

The Examiner rejected claims 1 to 46 and 48 to 53 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter while applicant regards as the invention.

In particular, the Examiner indicated that claims 1 to 46 and 48 to 53 contain the term "canola". The Examiner indicated that the term "Canola" is a trademark/trade name and should be replaced by reference to rapeseed. However, it is believed that the term "canola" is not currently registered in the United States as a word trademark. Attached is a printout from the PTO records with respect to a search using the term "CANOLA". Accordingly, it is unnecessary to change the term "canola" to "rapeseed".

The Examiner indicated that claims 5 to 10, 11 to 12 and 13 to 20 recited "said oil seed meal" and it was unclear which oil seed meal is being referred to. Claims 5, 8, 9, 11, 14, 17, 20 and 24 have been amended to recite "said desolventized oil seed meal", i.e. the product of step (c) of claim 1. The remaining claims to which the Examiner refers are dependent, directly or indirectly, on the amended claims.

The Examiner noted that claims 29, 31 to 32 and 34 recited that the protein isolate is diluted about 15 fold or less and asserts that the recitation includes a zero fold dilution. It is submitted that such is not the case. The claims positively

recite the step of "diluting", so that there can be no zero fold dilution. There must be a positive degree of dilution.


Having regard to the above and the amended form of the claims, it is submitted that the claims can no longer be considered to be indefinite and hence the rejection of claims 1 to 46 and 48 to 53 under 35 USC 112, second paragraph, should be withdrawn.

The Examiner rejected claims 1, 2, 5 to 10, 17 to 19, 29 to 31, 33 and 44 to 48 under 35 USC 103(a) as being obvious over Murray (US 6,005,076). It is noted that this rejection did not include claim 50, which recites that the solvent removal step is effected under vacuum. Claim 1 has been amended to recite that feature and claim 50 has been deleted. Having regard thereto, it is submitted that claims 1, 2, 5 to 10, 17 to 19, 29 to 31, 33 and 44 to 48 in their amended form are patentable over the applied prior art and hence the rejection thereof under 35 USC 103(a) as being unpatentable over Murray, should be withdrawn.

Submitted herewith is an IDS with respect to prior art cited against corresponding filings in other countries and not already of record herein. Authorization to charge the prescribed fee for the filing of an IDS at this stage of prosecution to our deposit account is enclosed.

It is believed that this application is now in condition for allowance and early and favourable consideration and allowance are respectfully solicited.

Respectfully submitted,



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US Appln. No. 10/517,277



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	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	78654992		CANOLA	TARR	DEAD
2	78614935		MADE WITH CANADIAN CANOLA	TARR	DEAD
3	78501422	3040858	CANOLA BALANCE	TARR	LIVE
4	78762498	3253099	CANOLA. GOOD FOR EVERY BODY!	TARR	LIVE
5	78723903		FERGUSON AUSTRALIA 40 ML LOBSTER OIL LOBSTER INFUSED CANOLA OIL	TARR	LIVE
6	78731679	3250686	CBI CANOLA BREEDERS INTERNATIONAL	TARR	LIVE
7	78766407	3183360	P-NOLA	TARR	LIVE
8	78770006		ALBERTA GOLD HI-BYPASS CANOLA PELLETS	TARR	LIVE
9	78160122	3275990	NATREON CANOLA OIL	TARR	LIVE
10	78337895		CANOLA CANADA CANOLA COUNCIL OF CANADA	TARR	DEAD
11	78315044		CANOLA	TARR	DEAD
12	78306104		CANOLA CANADA	TARR	DEAD
13	77283171		CANOLABIODIESEL	TARR	LIVE
14	77275763		WE USE CANOLA OIL LOW SATURATED FAT TRANS FAT-FREE	TARR	LIVE
15	77275731		WE USE CANOLA OIL LOW SATURATED FAT TRANS FAT FREE	TARR	LIVE
16	77275602		MADE WITH CANOLA OIL	TARR	LIVE
17	77228182		CANOLA HARVEST	TARR	LIVE
18	77228176		CANOLA HARVEST	TARR	LIVE
19	77020621		HOLA CANOLA!	TARR	LIVE
20	77181039		CANOLA OIL. GOOD FOR EVERY BODY!	TARR	LIVE
21	77178939		CANOLA. GOOD FOR EVERY BODY!	TARR	LIVE
22	77147445		CANOLACOUNCIL	TARR	LIVE

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23	77147451		CANOLAINFO.ORG	TARR	LIVE
24	76226382		PRAIRIE CANOLA	TARR	DEAD
25	75924543	2663843	CLEARLY CANOLA	TARR	LIVE
26	75397033		OPTIMUM CANOLA	TARR	DEAD
27	75289839		REGALE EXTRA VIRGIN OLIVE OIL CANOLA OIL	TARR	DEAD
28	75248349	2169218	U.S. CANOLA ASSOCIATION	TARR	DEAD
29	75151648		CANOLA GOLD	TARR	DEAD
30	75137763		CANOLA BUTTER	TARR	DEAD
31	74090260	1701960	CANOLA QUICK	TARR	LIVE
32	74638427	2003989	SUPER CANOLA	TARR	DEAD
33	74801819	1872005	CANOLA HARVEST	TARR	LIVE
34	74801246	1798831	CANOLA HARVEST	TARR	LIVE
35	74245095	1722222	CANOLA OUR FLAVOR OF EXCELLENCE	TARR	LIVE
36	74256003	1789542	PREPARED IN 100% CANOLA OIL CHOLESTEROL FREE LOW IN SATURATED FATS	TARR	DEAD
37	74638424	2045346	SPECTRUM NATURALS SUPER CANOLA	TARR	LIVE
38	74801886	1876046	CANOLA HARVEST	TARR	LIVE
39	74734413	2109612	"OLA CANOLA"	TARR	DEAD
40	74661488		CANOLA GOLD	TARR	DEAD
41	74474176	1921062	PREPARED IN 100% CANOLA OIL	TARR	DEAD
42	74446290		FLEISCHMANN'S CANOLA CHOICE	TARR	DEAD
43	74385320	1823408	"OLA CANOLA" MEXICAN FOOD EL SAGUARITO "THE HEALTHY MEXICAN FOOD ALTERNATIVE"	TARR	DEAD
44	74319735	1780452	CANOLA CLEAR FRY	TARR	DEAD
45	74277773	1772691	THE CHOICE IS CANOLA!	TARR	DEAD
46	74252598	1799510	CANOLA SMART CHOICE	TARR	LIVE
47	74220965	1756193	FLEISCHMANN'S CANOLA CHOICE	TARR	DEAD
48	74188323		CANOLA HARVEST	TARR	DEAD
49	74183118		CANOLA HARVEST	TARR	DEAD
50	74178061		EL SAGUARITO "OLA CANOLA" MEXICAN FOOD	TARR	DEAD

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51	74167369	1746509	FRYMAX CANOLA SUPREME	TARR	LIVE
52	74131411	1701965	PATTY'S CANOLA BUTTER THE HEALTHY ALTERNATIVE	TARR	DEAD
53	74069304	1647549	CANOLA SUNRISE	TARR	LIVE
54	74030570	1653182	CANOLA CREME	TARR	DEAD
55	74020026	1617786	CANOLA-MIST	TARR	LIVE
56	73829055	1609234	CANOLA	TARR	LIVE
57	73802241	1642503	U.S. CANOLA PROCESSORS	TARR	DEAD
58	73761307	1572165	CANOLA GOLD	TARR	DEAD
59	73668346		CANOLA	TARR	DEAD
60	73660955	1504440	CANOLA COUNCIL	TARR	DEAD
61	73612428		CANOLA RAPE SEED	TARR	DEAD
62	73539064		CANOLA SEED	TARR	DEAD
63	73267160		CANOLA	TARR	DEAD
64	72373522	0931122	CANOLA	TARR	DEAD

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